

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
AT CHARLESTON

RANDY L. THORNTON,

Petitioner

v.

CIVIL ACTION NO. 2:12-00245
(Criminal No. 2:04-00225)

UNITED STATES OF AMERICA,

Respondent

MEMORANDUM OPINION AND ORDER

Pending is petitioner's motion for rehearing of his request for a writ of error coram nobis, filed May 25, 2012. Petitioner essentially seeks the expunction of his \$5,000 fine and release from custody.

This action was previously referred to the Honorable Mary E. Stanley, United States Magistrate Judge, for submission to the court of her Proposed Findings and Recommendation ("PF&R") for disposition pursuant to 28 U.S.C. § 636. On March 13, 2012, the magistrate judge filed her PF&R. In its Judgment and accompanying memorandum opinion and order entered May 2, 2012, the court adopted the magistrate judge's PF&R. The court concluded that petitioner failed to demonstrate the demanding elements attached to a request for the writ to issue or to seek

a modification of the fine payment schedule pursuant to 18 U.S.C. § 3572(d)(3).

Nevertheless, the court construed one limited portion of the petition as a motion to modify the payment schedule pursuant to section 3572(d)(3). So construed to that confined extent, the court ordered that the payment schedule found in the Judgment should be reduced in amount from the rate of \$25 per month to the rate of \$25 per quarter, a sum that, as the court noted, petitioner has demonstrated a proven ability to pay over time.¹

In his motion for rehearing, petitioner asserts that he "was able to make quarterly [payments] only at the expense of most everything els[e]."¹ (Mot. at 1). Irrespective of this assertion, petitioner has not sought relief pursuant to section 3572(d)(3) and has not satisfied the requirements for the writ to issue. The court, accordingly, ORDERS that the motion for rehearing be, and it hereby is, denied.

¹ According to the payment schedule attached to petitioner's objections, he has made a \$25 payment for each quarter that has elapsed since December 2009.

The Clerk is directed to forward copies of this written opinion and order to the petitioner, all counsel of record, and the United States Magistrate Judge.

DATED: June 6, 2012



John T. Copenhaver, Jr.
United States District Judge